

Toohey (Migration) [2019] AATA 3183 (4 June 2019)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Mrs Yu-Shan Toohey

CASE NUMBER: 1800124

HOME AFFAIRS REFERENCE(S): BCC2016/2518224

MEMBER: Grant Chapman

DATE: 4 June 2019

PLACE OF DECISION: Adelaide

DECISION: The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa:

- cl.820.211(2)(a) of Schedule 2 to the Regulations
- cl.820.221 of Schedule 2 to the Regulations

1. Statement made on 04 June 2019 at 11:49am

2.

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – genuine spousal relationship – joint ownership of assets – legal obligations owed to other party – beneficiary of estate on Will – beneficiary of superannuation – shared household expenses – mutual commitment to shared life together to exclusion of all others – living together on permanent basis – shared responsibility of housework – decision under review remitted

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), r 1.15A(3), Schedule 2, cls 820.211(2)(a), 820.221

CASES

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

3. This is an application for review of a decision made by a delegate of the Minister for Immigration and Border Protection to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
4. The applicant, Yu-Shan Toohey, applied for the visa on 29 July 2016 on the basis of her relationship with her sponsor, Ivan Toohey. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
5. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211,(2)(a) because they were not satisfied that the evidence and information provided by the applicant and sponsor were sufficient to demonstrate that they were in a spousal relationship as defined under section 5F of the Migration Act.
6. The applicant appeared before the Tribunal, via video link between Darwin and Adelaide, on 12 April 2019 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor. The Tribunal hearing was conducted with the assistance of an interpreter in the Cantonese and English languages.
7. The applicant was represented in relation to the review by her registered migration agent, Mr Xiao Wang from Australian Integrity Migration Service, North Ryde, New South Wales. The representative attended the Tribunal Hearing.
8. Both prior to and after the Tribunal Hearing, the applicant and sponsor provided a substantial quantity of additional documents, which had not been provided to the Department of Immigration and Border Protection.
9. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

10. CONSIDERATION OF CLAIMS AND EVIDENCE

11. The issue in the present case is whether the applicant and her sponsor are in a spousal relationship, as defined by section 5F of the Migration Act.
12. In determining the applicant's claims, the Tribunal must first make findings of fact on material matters in dispute. This may involve an assessment of credibility and in so doing, the Tribunal is aware of the need and importance of sensitivity to the circumstances and difficulties applicants may face before the Tribunal, related to their particular situation.
13. The applicant relies on written submissions and supporting evidence provided to the Tribunal and previously to the Department, together with oral evidence which the applicant and sponsor gave at the Tribunal Hearing.

Whether the parties are in a spouse or de facto relationship

14. Relevantly to this matter, clauses 820.211(2)(a)] and 820.221 require that at the time the visa application was made and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand

citizen. In the present case the applicant claims to be the spouse of the sponsor, who is an Australian citizen.

15. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

16. If the parties are validly married, they may meet the requirements of a married relationship but not a de facto relationship. The applicant and sponsor provided to the Tribunal a copy of a Commonwealth of Australia Certificate of Marriage confirming that their marriage was solemnised, according to Civil Rites, by authorised celebrant, Cheryl Ann Kidd, on 20 June 2016, at Point Vernon, Hervey Bay, Queensland. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act, as required by s.5F(2)(a).
17. In examining the documentary evidence tendered and the oral evidence given by the applicant and sponsor at the Tribunal Hearing, the Tribunal has considered all aspects of the relationship as described in paragraph 12 above. In its examination of the applicant and sponsor at the Hearing, the Tribunal found their oral evidence to be credible, given without hesitation or obfuscation.
18. The applicant lodged a valid application for a Partner (Temporary) (Class UK) (Subclass 820) visa and Partner (Residence) (Class BS) (Subclass 801) visa on 29 July 2016.

Are the other requirements for a spouse relationship met?

19. *Financial aspects of the relationship*
20. *Joint ownership of assets:* At the Tribunal Hearing, the sponsor said that the applicant and he shared joint ownership of a 2006 model Mitsubishi sedan motor vehicle. This was confirmed by the provision of a Northern Territory Government Certificate of Registration for the vehicle in joint names. He said also that, jointly, they owned various items of household furniture and electrical goods valued in the range of \$5000 to \$8000. He told the Tribunal that he was earning approximately \$700 per week as a base salary plus sales commission, working for Godfrey's, while the applicant was earning approximately \$800 per week working at Izu-sushi. Given their modest incomes, the Tribunal accepts that the applicant and sponsor have been able to accumulate only modest joint assets. It finds that there is joint ownership of assets, at the time of application but gives this circumstance only limited weight in its Decision.
21. *Joint liabilities:* The applicant and sponsor provided to the Tribunal a Colliers International Memorandum of Variation – Tenancy Agreement, dated 25 August 2016, changing the previous tenants, of a residence at Woods Street, Darwin, Northern Territory, who were the sponsor and his brother, by adding the applicant to the Tenancy Agreement due to expire on 27 April 2017. They provided also a North Property NT Extension of Existing Tenancy

Agreement, dated 26 April 2018, in the names of the applicant and sponsor for the same Woods Street property from 27 April 2018 to 26 January 2019. The Tribunal finds that the applicant and sponsor have joint liability for their residential arrangements. However, it finds that this liability was entered into after the date of application for the visa, so gives this circumstance little weight in its Decision.

22. *Extent of pooling of financial resources:* (1) The applicant and sponsor provided copies of all Statements for an ANZ Access Advantage Cheque account in their joint names, commencing with Statement 1, 25 August 2016 through to Statement 15, concluding 25 February 2019, at address Woods Street, Darwin. The Tribunal notes that throughout this period this joint account has received deposits identified as being from both the applicant and the sponsor. However, prior to July 2018 there is no evidence of this account being used to meet any shared expenses, with the statements showing only transfers to and from accounts in the individual names of the applicant and sponsor. In his signed written statement of 29 March 2019, the sponsor said this was because the joint account was used for savings initially and not for general expenditure, that he had paid all of the household bills from his account and that the applicant's money would go towards savings and sometimes, grocery shopping. He said this worked for them to save. From July 2018 to the present, the account shows regular withdrawals, including via two Visa debit cards identified as belonging respectively to the applicant and sponsor, for various household expenses. In his written statement to the Tribunal, the sponsor claimed that the applicant and he had an earlier ANZ joint bank account, opened before the applicant departed Australia for Taiwan for an extended period from February 2015. He said that ANZ required them to open a new bank account after the applicant returned to Australia at the end of February 2016 because the old account had expired during the applicant's absence and couldn't be renewed. However, they did not provide any copies of statements for this previous account. (2) The sponsor provided copies of statements for a People's Choice Credit Union bank account in his name commencing with Statement 120, 30 April 2013 through to statement 192, concluding 31 March 2019 at address Dickward Drive, Coconut Grove, Northern Territory, until 31 May 2016 and thereafter at address Woods Street, Darwin. This account shows receipt of the sponsor's salary by direct credit, payment of rent and other household expenses, together with several transfers to the applicant's ING personal account described at (5) below, albeit that those transfers occurred after the date of visa application. (3) Also, the sponsor provided copies of Statements for an American Express Credit Card account opened on 22 November 2018 showing payments incurred for a card belonging to the sponsor and for another card belonging to the applicant. Reference to the joint account (1) above, shows that the American Express account was being paid from the joint account. (4) Also provided, were copies of bank statements in the name of the applicant for four NAB bank accounts. The first of these is a NAB Classic Banking account opened on the day the applicant first arrived in Australia, 11 April 2013, with Statement 1, through to statement 15, concluding 8 July 2015, which the Tribunal notes, at that date, had an overdrawn sum of \$30.34 transferred to Collections as a Bad Debt and the account closed. The Tribunal notes this sum had been showing as overdrawn on statements since 3 February 2015, just prior to the applicant's departure for Taiwan for an extended period, as discussed later in paragraph 19. It is clear from the account statements that this account fell into disuse after the applicant's departure from Australia at that time. The Tribunal notes also that the address given for this account when opened was at Larrakeyah, Northern Territory but from statement 9, commencing 7 August 2014, the address for this account is Dickward Drive, Coconut Grove, Northern Territory. This coincides with the address of the sponsor's People's Choice account during the same period, described in (2) above. The second NAB account of the applicant was another Classic Banking account, commencing with Statement 1, commencing 10 March 2016 and Statements 3 and 10, concluding 5 January 2018, being provided to the Tribunal, all showing the Woods Street address. This account shows very limited use prior to the date of visa application and until November 2016, after which there are regular withdrawals which may be attributable to household expenses. The third NAB account of the applicant is an

iSaver. Only intermittent statements were provided for this account, being Statement 4 commencing 7 October 2014 with a credit balance of \$1043.60, suggesting it may have been opened at the same time as the above NAB account, including Statements 6, 8, 10 and 16, concluding 4 January 2019. This account shows the Coconut Grove address until 6 April 2016, being on Statement 6, with the Woods Street address showing from statement 8 but which may have commenced from Statement 7, 7 April 2016, which has not been provided to the Tribunal. (5) The applicant provided also copies of all statements for two ING bank accounts. The first was an Orange Everyday account, commencing with Statement 1, from 13 October 2017 to Statement 6, concluding 31 March 2019, at address Woods Street, Darwin. This account shows deposits of the applicant's wages by direct credit, some payments attributable to household expenses, transfers to and from a linked ING Savings Maximiser account and several transfers to the sponsor's People's Choice account, referenced in the names of the applicant and sponsor. All of the Statements were provided for the second ING account, a Savings Maximiser account, commencing Statement 1, 13 October 2017 to Statement 3, concluding 31 December 2018, at address Woods Street, Darwin. This account shows only transfers to and from the above Everyday account. From its analysis of all of the above bank accounts, in the absence of any copies of statements from the claimed earlier joint account, the Tribunal finds that, prior to the date of visa application, there is no direct evidence of pooling of financial resources. There may have been some indirect pooling by way of the applicant and sponsor sharing some of the day-to-day household expenses but making payments from their own individual accounts. The applicant said that from the time they started living together in 2014 and after she returned to Australia in early 2016 and subsequently married the sponsor, it was always his view that it was the boyfriend/husband's responsibility to look after the girl financially and hence, most of their day-to-day living expenses were paid from his account. The Tribunal finds some evidence of the pooling of financial resources from the opening of the ANZ joint account in August 2016, which is after the date of visa application. Consequently, the Tribunal gives little weight to this circumstance in its Decision.

23. *Any legal obligations owed to the other party:* The sponsor provided a Colonial First State Non-lapsing Death Benefit Nomination Form, signed and witnessed on 5 April 2019 in which he nominates the applicant as 100% beneficiary of his superannuation fund. The applicant provided an ANZ Smart Choice Super fund document dated 26 March 2019, showing that the sponsor was nominated to receive 100% as beneficiary of her superannuation, although it is not clear from this document whether it is a binding or non-binding nomination. The applicant and sponsor both provided Wills, executed on 26 March 2019, nominating each other as the sole beneficiary of their estate and in the event that the other predeceases them, the sponsor's mother as the beneficiary. The Tribunal finds that there are legal obligations which each party owes to the other but notes that all of these documents were executed after the date of visa application. However, it finds that this reflects the continuing development of the relationship of the applicant and sponsor and consequently gives this circumstance some weight in its Decision.
24. *Any sharing of day-to-day household expenses:* As described in paragraph 18 above, the Tribunal finds that, prior to the date of visa application, day-to-day household expenses were being met from the individual personal accounts of the applicant and sponsor. Nevertheless, as described in paragraphs 23 and 31 below, it accepts that the applicant and sponsor were living together prior to that date and that the goods and services for which payment was made from their individual accounts were shared between them. Therefore, it finds that there was sharing of day-to-day household expenses between the applicant and sponsor at the time of visa application and gives this circumstance substantial weight in its Decision.
25. *Financial aspects conclusion:* Overall, the Tribunal places moderate weight on the cumulative evidence presented regarding the financial aspects of the relationship between the applicant and sponsor, at the time of visa application, as demonstrating that the

relationship is a mutual commitment to a shared life together to the exclusion of all others, being a genuine and continuing relationship and that they are living together, or not separately and apart on a permanent basis.

26. *The nature of the household*

27. *Any joint responsibility for the care and support of children:* There is no evidence before the Tribunal nor have the applicant or sponsor claimed that they have any children, jointly or separately. The Tribunal finds that there is no joint responsibility on the part of the applicant and sponsor for any children but gives this circumstance no weight in its Decision.
28. *The living arrangements of the applicant/sponsor:* The applicant and sponsor both told the Tribunal Hearing that they started living together in the latter part of February 2014, in the two bedroom home unit at Coconut Grove rented by the sponsor at the time. They both said that they had met in Darwin in March 2013, soon after the applicant had arrived in Australia from Taiwan, on a working holiday visa. However, this was an error of fact on their parts, as the Movement Record shows the applicant did not arrive in Australia until 11 April 2013, so the earliest possible meeting would have been sometime in April 2013. They said that at the time they met, the applicant had started working as a masseuse at the facility at which the sponsor had massage treatment for scoliosis from time to time. The sponsor said that he was attracted immediately to the applicant and returned to the facility once a week for a month before asking her to go out with him, which invitation she refused. After that, he visited more frequently and eventually she accepted a date invitation to a noodle restaurant on 1 June 2013 and the next day the applicant accepted his invitation to be his girlfriend. The applicant's evidence regarding the early stages of the relationship was broadly consistent with that of the sponsor. The applicant said they shared a holiday together in Bali commencing on her birthday, 13 October 2013. They returned to Darwin on 20 October 2013. Airline boarding passes for both, together with their Movement Records confirm this shared travel. The applicant told the Tribunal that, as the relationship developed on this holiday, she asked the sponsor to travel with her to Taiwan to meet her family and get to know her place of origin. She said that on 4 February 2014 they flew to Taiwan together. The sponsor described this as a decision in February 2014 to spend Chinese New Year in Taiwan together. This is an error of fact as the boarding pass and Movement Record of the sponsor show that he departed Australia for Taiwan on 3 February 2014, while the applicant's travel to Taiwan was on 29 December 2013. However, the documentary evidence of boarding passes and Movement Records shows that they returned to Australia from Taiwan on a flight together, arriving on 15 February 2014. When questioned on this discrepancy, the applicant and sponsor were unable to explain it, other than by failed memory over the ensuing five years. They both said that on their return to Australia from this trip they travelled to Brisbane, spending a few days together there, before driving to Hervey Bay to spend time with the sponsor's parents, before returning to Darwin in late February 2014. They both said that it was at that time that the sponsor asked the applicant to move in with him at Coconut Grove, where his brother was sharing the unit and continued to do so. A Form 888 Statutory Declaration dated 19 July 2016 and a signed statement dated 26 March 2019 by the brother confirm that he shared accommodation with the sponsor and applicant from February 2014 although there is some discrepancy in the dates that he gives for that period of his sharing accommodation with them. Given documented evidence regarding other aspects of the relationship between the applicant and sponsor, the Tribunal accepts that this discrepancy on the part of the brother is an honest mistake and finds that living arrangements of the brother, other than providing some confirmation of those of the applicant and sponsor, are not significantly material to its Decision. The addresses on the bank accounts of the applicant and sponsor, described in paragraph 18 above, respectively, during this period, give some credence to their claim to have lived together in a Coconut Grove residence from February 2014 to February 2015. The applicant and sponsor said that they shared another trip to Bali from 19 October 2014 to 24 October 2014, which was confirmed by the provision

of airline boarding passes and reference to their Movement Records. They told the Tribunal that they continued to live together at the Coconut Grove property until the applicant had to return to Taiwan because of the expiry of her working holiday visa. They said that they travelled to Taiwan together, departing Australia on 7 February 2015. Evidence in the form of airline boarding passes and their Movement Records supports this claim. The applicant remained in Taiwan with her family because her entitlement to a working holiday visa expired. The sponsor told the Tribunal that, in the meantime, he returned to Australia on 22 February 2015, which is documented by airline boarding passes and his Movement Record. The applicant and sponsor said that during 2015 they talked to each other every day by telephone and Internet. The sponsor provided copies of his Optus Yes accounts throughout 2015, which confirm these claims. The applicant said that, although they loved each other, during this period of physical separation they didn't discuss the future, she wasn't sure whether they would stay together forever and the sponsor wasn't pressing her to come back to Australia. The sponsor said that he visited Taiwan on 30 May 2015 to 21 June 2015 to celebrate his birthday with the applicant during which she surprised him by taking him to Japan for a holiday, accompanied by some of her friends. Airline boarding passes in the names of the applicant and sponsor for travel from Tokyo to Taipei 13 June 2015 confirm this claim. Also confirmed by airline bookings and the sponsor's Movement Record is his claim to a further visit to Taiwan, from 26 September 2015 to 18 October 2015, to celebrate the applicant's birthday. The sponsor said that he was missing the applicant and in late December 2015 he proposed to her during a telephone conversation, acknowledging that this was a less than a romantic ideal way of proposing. Both the applicant and sponsor said that she responded by seeking two days to think about it. She said that this was a big decision which she had to think about carefully and discuss with the family. The applicant said that because accepting the sponsor's proposal meant leaving her family and friends in Taiwan to start new life in Australia, she gave the matter thorough consideration and engaged in lengthy discussion with her family and friends. She decided to accept his proposal because she believed that the sponsor was her "Mr Right" and that she would never find another man who loves her so well. She applied for a tourist visa to return to Australia to prepare for her wedding. When asked by the Tribunal why they had not applied for a prospective spouse visa, the applicant and sponsor said they were unaware of the availability of such a visa and hadn't consulted a migration agent at that time. The Tribunal accepts this explanation. The claim of the sponsor that he returned to Taiwan on 29 January 2016 to assist the applicant to return to Australia, which they did together on 28 February 2016, is supported by airline boarding passes and their respective Movement Records. They told the Tribunal that they have lived together at the Woods Street home unit from then until the present time. The Tenancy Agreements, together with the addresses on the respective bank statements of their applicant and sponsor, give some documentary credence to this claim regarding the living arrangements. They were married on 20 June 2016 at the home of the sponsor's parents in Hervey Bay, Queensland. The Tribunal finds that the applicant and sponsor had shared living arrangements for a significant period of time prior to the date of visa application, continue to do so and gives this circumstance substantial weight in its Decision.

29. *Any sharing of responsibility for housework:* The applicant told the Tribunal Hearing that in the early stages of living with the sponsor she did a lot of the household chores, with the sponsor being lazy in that regard. However, she said she has pushed him successfully to do his share, so that she does the general cleaning and cooking, while the sponsor does the vacuuming and dishwashing. As they are living in a home unit, there are no external tasks. The Tribunal finds that the applicant and sponsor shared responsibility for housework prior to the date of visa application, continue to do so and gives this circumstance significant weight in its Decision.
30. *Household aspects conclusion:* The Tribunal places substantial weight on the cumulative evidence presented regarding the nature of the household, at the time of visa application, as

being one which demonstrates the relationship between the applicant and sponsor as being a mutual commitment to a shared life to the exclusion of all others, being a genuine and continuing relationship and that they are living together, or not separately and apart on a permanent basis.

31. *The social aspects of the relationship*

32. *Whether the persons represent themselves to other people as being married to each other:* The applicant and sponsor provided four Form 888 Statutory Declarations, principally from former work mates of the sponsor and a signed statement by the sponsor's brother, all of which attest to the genuineness and strength of the relationship but only one of these refers to the fact of their marriage. However, the applicant and sponsor provided numerous photographs of themselves in social situations with friends and family, both in Darwin and in Taiwan, before and after the date of their wedding, which show clearly that they are a couple together. Also, there are numerous photographs of their wedding at Hervey Bay on 20 June 2016 and their subsequent Taiwanese ceremony on 29 June 2018, supporting their claim that the ceremony was attended by 180 friends and family from Taiwan, Australia and Japan. Airline boarding passes, together with their respective Movement Records, confirm that the applicant and sponsor travelled to Taiwan for this ceremony on 20 June 2018 and returned to Australia on 14 July 2018. On the evidence before it, the Tribunal is satisfied that the applicant and sponsor represented themselves to other people as being married at the time of visa application, continue to do so and gives this circumstance substantial weight in its Decision.
33. *The opinion of friends and acquaintances about the nature of the relationship:* Although limited in number, the Form 888's to which reference is made in paragraph 26 above, attest strongly to the belief of the declarants that the relationship between the applicant and sponsor is genuine and continuing. During the separate questioning at the Tribunal Hearing, the applicant and sponsor each demonstrated detailed knowledge of the family and friends of the other party. The Tribunal is satisfied that friends and acquaintances regarded the relationship as genuine at the time of visa application, continue to do so and gives this circumstance substantial weight in its Decision.
34. *Any basis on which the persons plan and undertake joint social activities:* The sponsor told the Tribunal Hearing that they undertake a range of social activities together, both as a couple and in the company of friends. He said they go bike riding and swimming together and share picnics, including in the evening because the applicant enjoys observing the night stars. He said they like going to the movies together and identified Captain Marvel as the last movie they had seen, which was confirmed by the applicant, when questioned separately. The sponsor said that they have a number of friends in Darwin, of both Taiwanese and Australian origin, with whom they share social occasions, including cooking at home and Chinese games nights, with board games which he doesn't understand. As described in paragraph 23 above, by February 2015, they had shared two trips to Bali and two trips to Taiwan. The sponsor had three trips to Taiwan while the applicant was residing there in 2015, which involved extensive shared social activity, including with the friends of the applicant who lived in Taiwan, together with a shared trip to Japan. Since the applicant's return to Australia on 28 February 2016, they have shared two further trips to Taiwan, between 11 February and 25 February 2018 and between 20 June and 14 July 2018, the latter including a Singapore stopover, both evidenced by airline boarding passes and reference to their respective Movement Records. Airline boarding passes also confirm shared domestic holidays in Adelaide, Melbourne and Hobart since their marriage. The Tribunal finds that, prior to the date of visa application, the applicant and sponsor shared a range of social activities, continue to do so and give this circumstance substantial weight in its Decision.

35. *Social aspects conclusion:* The Tribunal places substantial weight on the cumulative evidence presented regarding the nature of the social aspects of the relationship between the applicant and sponsor, at the time of visa application, as being one which exhibits a mutual commitment to a shared life to the exclusion of all others, being a genuine and continuing relationship and that they are living together, or not separately and apart on a permanent basis.
36. *The nature of the persons' commitment to each other*
37. *The duration of the relationship:* On the evidence before it, as described in some detail in paragraph 23 above, the Tribunal finds that the applicant and sponsor first met in April 2013 and that the relationship has grown steadily and strengthened during the subsequent five years. The Tribunal notes that the development of the relationship has not been rushed, with nearly 12 months elapsing before the couple commenced living together and that it has survived apparent periods of uncertainty during the applicant's enforced absence from Australia. On an overall assessment of the nature of the relationship, the Tribunal finds that, as a genuine and committed relationship, it began in late December 2015, therefore having a duration of some eight months prior to the date of visa application and has had a continuing duration, to date, of some three and a half years.
38. *The length of time during which the persons have lived together:* On the evidence before it, the Tribunal accepts that the applicant and sponsor have lived together continuously from late February 2014 until early February 2015 in Australia, from 30 January 2016 to 27 February 2016 in Taiwan and since 28 February 2016 in Australia, an accumulated period of 18 months prior to the date of visa application and a total of nearly four and a half years to date.
39. *The degree of companionship and emotional support the persons draw from each other:* The sponsor told the Tribunal Hearing that when he first met the applicant he was stunned by her beauty, found that she was easy to be around and made him feel comfortable. He said that he missed her company during their period of enforced separation in 2015 and that they understand each other and work together well. He said they talk to each other about their respective work, about the situation in Taiwan their respective families and their future. He said that, in Taiwan, the applicant had a good life with wonderful friends and a good job, so it has been hard for her to make the decision to spend her life with him and this demonstrates the strength of her commitment. The applicant said they talk about everything and sometimes the sponsor says that she talks too much. She told the Tribunal the days with the sponsor are full of joy, that they have trust in each other and were made for each other. The Tribunal finds that the descriptions above, together with the companionship evident in the shared physical and social activities described in paragraph 28 above, confirm that the applicant and sponsor provide companionship and emotional support to each other.
40. *Whether the persons see the relationship as a long-term one:* When questioned on this aspect of the relationship, the applicant and sponsor, separately, provided evidence that they have shared consideration of their future together. They said that they were saving to buy their own house and considering where there may be better job opportunities, including the possibility of moving to Perth. They have been trying to start a family, so far without success. The Tribunal finds that the applicant and sponsor see their relationship as a long-term one.
41. *Commitment conclusion:* The Tribunal places substantial weight on the cumulative evidence presented regarding the nature of the persons' commitment to each other, at the time of visa application, as being one where the relationship between the applicant and sponsor exhibited a mutual commitment to a shared life to the exclusion of all others, being a genuine and continuing relationship, that they were living together with long-term intent and continue to do so.

42. *Any other relevant considerations*

43. The Tribunal notes that the agent of the applicant and sponsor, in a written submission of 3 April 2019, accompanying their respective signed statements, dated 29 March 2019, while referring to circumstances prior to the date of visa application, concludes with reference to the nature of the relationship the time of decision. While the Tribunal notes the continuing state of the relationship at the time of its Decision, it emphasises that the primary requirement on the Tribunal is to make its Decision on the nature of the relationship at the time of visa application.

44. *Overall conclusions*

45. For the above reasons, having carefully considered each of the prescribed factors under s.5F (2)(a–d), the Tribunal is satisfied that, at the time of visa application and at the time of this decision, the visa applicant and the sponsor were in a genuine and continuing relationship and had a mutual commitment to a shared life together to the exclusion of all others and live together, or not separately or apart on a permanent basis.
46. Given these findings, the Tribunal is satisfied that the requirements of s.5F(2) are met at the time the visa application was made and at the time of this decision.
47. Furthermore, the Tribunal is satisfied that, at the time of visa application, the applicant was sponsored by her spouse who has turned 18 and that the applicant was the holder of a substantive visa and therefore, the requirements of cl.820.211(c) and (d) are met.
48. Therefore the applicant meets 820.211(2)(a) and cl.820.221.
49. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

DECISION

50. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa:
- cl.820.211(2)(a) of Schedule 2 to the Regulations
 - : cl.820.221 of Schedule 2 to the Regulations

Grant Chapman
Senior Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).